

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Erika Beckett, et al.,

Court File No. 16-cv-877 (DWF/LIB)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

American Family Insurance,

Defendant.

This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiffs commenced the present action on April 4, 2016, by filing their Complaint. (Compl. [Docket No. 1]). More than 90 days after Plaintiffs filed their Complaint, Plaintiffs had not provided proof of service of a summons and Complaint on Defendant American Family Insurance. Accordingly, the Court issued an Order notifying Plaintiffs that the Federal Rules of Civil Procedure require plaintiffs to demonstrate proof of service “within 90 days after the complaint is filed, [or] the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). Pursuant to Rule 4(m), the Court directed Plaintiff to provide proof of service or demonstrate good cause for an extension of time to serve Defendant, failing which the Court would recommend dismissal for failure to effect proper service and failure to prosecute. (Order [Docket No. 3]).

The time for Plaintiffs to provide proof of service or demonstrate good cause for an extension of time to serve Defendant has come and gone, and Plaintiffs have neither provided

proof of service nor articulated good cause as to why the Court should grant them an additional extension of time to do so. Therefore, pursuant to Rule 4(m), **IT IS HEREBY RECOMMENDED** that Plaintiffs' Complaint, [Docket No. 1], be **DISMISSED without prejudice**, for failure to effect service and for lack of prosecution, unless Plaintiffs, within the 14-day period to object to this Report and Recommendation, provide proof of service or demonstrates good cause for an extension of time to serve Defendant. See *Widtfeldt v. Daugherty*, 587 F. App'x 992 (8th Cir. 2014) (*per curiam*, unpublished) (holding that the district court did not abuse its discretion in dismissing the action without prejudice when plaintiff failed to establish that he had properly effected service within 120 days after filing his complaint).

Dated: August 19, 2016

s/ Leo I. Brisbois
 Leo I. Brisbois
 U.S. MAGISTRATE JUDGE

N O T I C E

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "A party may file and serve specific written objections to a magistrate judge's proposed findings and recommendation within 14 days after being served with a copy of the recommended disposition[.]" A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.